(29) (31) (23)

Nos. 93-517, 93-527, 93-539

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

BOARD OF EDUCATION OF THE KIRYAS JOEL VILLAGE SCHOOL DISTRICT, BOARD OF EDUCATION OF THE MONROE-WOODBURY CENTRAL SCHOOL DISTRICT AND THE ATTORNEY GENERAL OF THE STATE OF NEW YORK,
Petitioners,

v.

LOUIS GRUMET and ALBERT W. HAWK,
Respondents.

On Writ of Certiorari to the New York Court of Appeals

JOINT APPENDIX

NATHAN LEWIN
(Counsel of Record)
LISA D. BURGET
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W.
Washington, D.C. 20037
(202) 293-6400

Attorneys for Petitioner Board of Education of the Kiryas Joel Village School District

JAY WORONA
(Counsel of Record)
PILAR SOKOL
16 Cayuga Street
Slingerlands, New York 12159
(518) 465-3474

Attorneys for Respondents

[Additional Counsel listed on inside cover]

PETITION FOR CERTIORARI FILED SEPTEMBER 30, 1993, IN NO. 93-517 AND OCTOBER 1, 1993, IN NOS. 93-527 AND 93-539
CERTIORARI GRANTED NOVEMBER 29, 1993

10 pp

LAWRENCE W. REICH
(Counsel of Record)
JOHN H. GROSS
NEIL M. BLOCK
INGERMAN, SMITH, GREENBERG,
GROSS, RICHMOND, HEIDELBERGER,
REICH & SCRICCA
167 Main Street
Northport, New York 11768
(516) 261-8834

Attorneys for Petitioner Board of Education of the Monroe-Woodbury Central School District

G. OLIVER KOPPELL
Attorney General of the State of New York
JERRY BOONE
Solicitor General
(Counsel of Record)
PETER H. SCHIFF
Deputy Solicitor General
JULIE S. MERESON
Assistant Attorney General
The Capitol
Albany, New York 12224
(518) 474-3654

Attorneys for Petitioner Attorney General of the State of New York

TABLE OF CONTENTS

DOCKET ENTRIES

Date	PROCEEDINGS
1/19/90	Complaint filed.
2/12/90	Answer filed.
2/14/90	Motion to Intervene filed by Board of Education of the Monroe-Woodbury Central School District.
2/27/90	Plaintiffs' Opposition to Motion to Intervene by the Board of Education of the Monroe-Woodbury Central School District filed.
3/5/90	First Amended Complaint filed.
3/8/90	Motion to Intervene filed by Board of Education of the Kiryas Joel Village School District.
3/14/90	Plaintiffs' Opposition to Motion to Intervene by Board of Education of the Kiryas Joel Village School District filed.
3/26/90	Answer to First Amended Complaint filed.
4/19/90	Oral argument on motions to intervene; Court grants motions from bench and orders plaintiffs to file a Second Amended Complaint adding intervenors as defendants.

Date	PROCEEDINGS
4/26/90	Second Amended Complaint filed.
5/3/90	Answer to Second Amended Complaint filed by Board of Education of the Kiryas Joel Village School District.
	Answer to Second Amended Complaint and Counterclaim filed by Board of Education of the Monroe-Woodbury Central School District.
5/7/90	Answer to Second Amended Complaint filed by State Defendants.
5/10/90	Written Order Permitting Intervenor-Defendant Status entered.
5/23/90	Plaintiffs' Answer to Counterclaim filed.
8/21/90	Stipulation and Order discontinuing action as against State Defendants and providing for Attorney General of New York to continue to appear in action pursuant to Executive Law § 71 entered.
4/25/91	Stipulation withdrawing Counterclaim filed.
5/3/91	Motion for Summary Judgment filed by Plaintiffs.

Date	PROCEEDINGS
6/21/91	Cross-Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment filed by Defendant Board of Education of the Kiryas Joel Village School District.
	Cross-Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment filed by Defendant Board of Education of the Monroe-Woodbury Central School District.
	Cross-Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment filed by the Attorney General of New York.
7/19/91	Opposition to Defendants' Cross-Motions for Summary Judgment filed by Plaintiffs.
1/22/92	Trial court's opinion granting summary judgment for Plaintiffs and denying summary judgment for Defendants.
2/10/92	Order and Judgment declaring Chapter 748 of the Laws of 1989 unconstitutional entered in the Albany County Clerk's Office.
2/14/92	Notice of Appeal filed by Board of Education of the Kiryas Joel Village School District.

Date	PROCEEDINGS
2/19/92	Notice of Appeal filed by the Board of Education of the Monroe-Woodbury Central School District.
3/6/92	Motion to Vacate Statutory Stay Pending Appeal filed by Plaintiffs.
3/10/92	Notice of Appeal filed by Attorney General of New York.
5/1/92	Order of Appellate Division, Third Department, denying Motion to Vacate Statutory Stay.
12/31/92	Opinion and Order of Appellate Division, Third Department, affirming trial court's order, decided and entered.
1/6/93	Notice of Appeal filed by Board of Education of the Kiryas Joel Village School District.
	Notice of Appeal filed by Board of Education of the Monroe-Woodbury Central School District.
1/11/93	Notice of Appeal filed by the Attorney General of New York.

Date	PROCEEDINGS
1/21/93	Motion to Vacate Statutory Stay Pending Appeal and for Leave to Cross Appeal filed by Plaintiffs.
2/25/93	Order of New York Court of Appeals denying Plaintiffs' Motion to Vacate Statutory Stay and for Leave to Cross Appeal.
7/6/93	Opinion of New York Court of Appeals affirming order of Appellate Division as modified.
7/8/93	Remittitur of New York Court of Appeals entered.
7/12/93	Order to Show Cause and Application for Stay filed by Board of Education of the Kiryas Joel Village School District.
	Order to Show Cause and Application for Stay filed by Board of Education of the Monroe-Woodbury Central School District.
7/15/93	Oral Order by Judge Smith (New York Court of Appeals) extending statutory stay pending determination of Defendants' Applications for Stay.

Date	PROCEEDINGS
7/19/93	Order by Judge Smith (New York Court of Appeals) denying Defendants' Applications for Stay.
7/20/93	Application to Stay Mandate of the New York Court of Appeals submitted by Board of Education of the Kiryas Joel Village School District to Justice Clarence Thomas as Circuit Justice for the Second Circuit.
	Application to Stay Mandate of the New York Court of Appeals submitted by Board of Education of the Monroe-Woodbury Central School District to Justice Clarence Thomas as Circuit Justice for the Second Circuit.
7/21/93	Order by Justice Clarence Thomas staying judgment of New York Court of Appeals pending receipt of response and further order of the Court.
	Opposition to Applications to Stay Mandate filed by Plaintiffs.
7/26/93	Order of the Supreme Court granting applications for stay of the judgment of the New York Court of Appeals pending timely filing and disposition by the Court of a petition for writ of certiorari.

Date	PROCEEDINGS
9/30/93	Petition for Writ of Certiorari filed by Board of Education of the Kiryas Joel Village School District.
10/1/93	Petition for Writ of Certiorari filed by Board of Education of the Monroe-Woodbury Central School District.
	Petition for Writ of Certiorari filed by the Attorney General of New York.
10/29/93	Opposition to Petition for Writ of Certiorari filed by Respondents.
11/29/93	United States Supreme Court grants Writs of Certiorari.

SUPERVISOR, TOWN OF MONROE
ORANGE COUNTY, NEW YORK

---x

IN RE MATTER OF THE FORMATION
OF A NEW VILLAGE TO BE
KNOWN AS

"KIRYAS JOEL"

---x

DECISION ON SUFFICIENCY OF PETITION

ROGERS, W.C., Supervisor

There has been presented to the undersigned a petition framed under the provisions of the Village Law of this State to form a new village within the bounds of the Town of Monroe. The name of the village is proposed to be KIRYAS JOEL, which roughly translated means "Community of Joel."

The petition was presented to me on November 8, 1976. Notice of the required public hearing on that petition was published in the Monroe Gazette on November 11th and November 18th, 1976. A copy of the same Notice was posted in five public places within the territory to be carved out as a new village on November 15, 1976. The public hearing on the petition was held on December 2, 1976 in the basement of Garden Apartment #5 on Quickway Road in Section I of the Monwood Subdivision, the principal area of the village to be. The petition, affidavits of posting and

publishing, written objections and the verbatim transcript of the testimony of the hearing are filed herewith.

Before relating to the technical niceties of the petition and the objections thereto, the reasons for this new birth should somehow be set down so that present and future residents of this 177 year old Town [1] may know why there is now a third village in their midst. [2] This decision seems to be a most appropriate place to do so.

The traditional elements that underlie the self incorporation of a new municipality are principally the desire and need of residents of a more densely populated area for municipal services which in the past were usually not available at the hands of a Town or County. The desired services were usually water supply, police protection, fire protection and sewer systems. The laws of this State have changed considerably in the last 50 years and all these services are now available through the Town, and in many cases are being supplied by both Town and Counties throughout the State. Thus, the need for self-incorporation into villages has, for the most part, disappeared. A cursory review of State records indicates that there have been only nine villages formed in the entire State since the end of World War II. The area to be included in this new village is now served by a town water and sewer district (privately maintained but subject to Town takeover). It will shortly be incorporated into the operation of Orange County Sewer District #1. It finds police protection from the nearby

---

[1] Monroe was created by act of the Legislature adopted in 1799 under the name "Cheesecocks".

[2] The Village of Monroe was incorporated in 1894; the Village of Harriman in 1914.

barracks of the New York State Police. It has fire protection from the Mombasha Fire Company, the same Company that serves the Village of Monroe. Its roads are more than adequately maintained by the Town of Monroe Highway Department and the area is subject to every Town wide protective ordinance or local law that this Town has enacted. Why then is there a need to incorporate?

The answer to this question lies in the makeup of the individuals who will reside within this new village, should I approve this petition. These residents are and will be all of the Satmar Hasidic persuasion. They dress, worship and live differently from the average Monroe citizen. In and of itself these facts are of no moment. Perhaps the Satmar Hasidic manner of dress, means of worship and way of life are more noble than mine or the rest of Monroe's citizenry. Perhaps not. That is not in issue. However, the Satmar believe in large, close knit family units and sociological groups and are accustomed to a highly dense urban form of living, having for the most part been residents of the Borough of Brooklyn in the City of New York since the end of World War II. Furthermore, the sociological way of life for the Satmar Hasidic is one of disdained isolation from the rest of the community. These factors are at the root of their need to incorporate.

When the Satmar leadership chose Monroe as a future place of residence for some of their community, they purchased an already approved but unbuilt upon subdivision that lay within a rural, residential, low-density zoning district set aside for single family homes on 25,000 sq. ft. lots (R-150 district). This district also permitted 80 multiple units of garden apartments. This subdivision was and is still called "Monwood". In constructing the dwellings in Monwood, the Town Board and the Town Building Department felt strongly

that many of the dwellings were converted into two and some three family units and that dwellings under construction were being constructed for two and three units each. We felt these conversions and new construction to be surreptitious and illegal and commenced legal proceedings to compel a reconversion and halt future residential construction until zoning conformance was had. It was a bitter contest opposed at every conceivable step by the Satmars. The legal contest virtually consumed this Town for five months and the cry went up from the other residents of this Town, particularly those of the Northeast area where the Monwood subdivision lies, to enforce our Zoning and Building Codes. The most salient observation was, "If I have to obey the Zoning Law, so do the Satmars".

The Town Board never really understood the reason for the arduous opposition thrown up by the Satmar community to its code enforcement position but felt it lay buried deep in an economic reality that the business leaders could not market the dwellings to their membership unless the cost of maintaining them could be shared by two or three tenants (and their families), whether or not they were related in family groups or were no more than income tenants. Perhaps zoning enforcement might have meant financial ruin for the Monwood business leaders. We felt that those who actually bought or contracted to buy the dwellings had no idea of the Town's zoning restrictions and were unsuspecting objects of the enforcement action.

We also felt that the Town's enforcement position was a rallying point for the Satmar's ingrained feeling of persecution against the Jewish faith. The more the Town sought to enforce, the more it was accused of persecuting the Hasidic Jews. Of course, nothing could be further from the truth. The Satmars were and are welcomed in Monroe as

any new group would be. Their customs were respected and accommodated. They received approval to build a large Synagogue on Forest Road, as well as a private educational complex and religious bath facility. A temporary bath was allowed as were the use of the basements in the garden apartments for schooling pending completion of the permanent facilities. Indeed, there was no problem at all relative to the Satmars in Monroe until the zoning issue. Perhaps this fictitious "persecution" syndrome clouded the real issue more than anything else. It was an erroneous and distinctly unfair invective to toss at the Town's zoning enforcement program.

At any rate the Town's zoning position is well documented in the several law suits that arose in this controversy. (i.e., In the Matter of the Application of Andrew W. Barone; Buchinger v. Moore; Schwartz v. DeAngelis; United Talmudic Association v. Town of Monroe; Monfield Homes, Inc. v. Moore; Hirsch v. Moore; and the several applications decided by the Zoning Board of Appeals.

At the height of the dispute the Satmars presented to me a petition to form a new village of very large dimensions which included many properties and people not of the Satmar belief. The Town Board felt that that attempt at self incorporation was a use of the Village Law to escape the accusing finger of the Town which would at the same time allow the Satmars to enact their own zoning laws designed to suit their economic and sociological needs. The Town realized the strength of the Satmar move in that the Board was, by law, foreclosed from passing upon the public good - or lack of it - in forming such a village, yet (by a split vote) the Board decided to attack the very law that enabled the formation of a village without a decision by the Town from

whence it would be carved upon the public good of such a creation.

At the same time a petition was presented to the Town Board and the Village of Monroe Board of Trustees by the Northeast property owners to annex land around the core of the Monwood subdivision into the Village of Monroe and to do so before action was taken on the new village application, thereby precluding the formation of the new village (a new village cannot be formed within the bounds of another). This led to an attack on that proceeding in United States District Court by means of a "civil rights" suit (Schwartz, et al. v. DeAngelis, et al.), and that in turn led to compromise negotiations between the Satmar leadership and the residents of the northeast section of Town.

After strenuous negotiations virtually all the Northeast property owners and the Satmar group agreed to the formation of a new village on a much smaller scale than originally proposed and one that would not include any one who did not want to be within its bounds. It was limited to 320± acres owned by the Satmar community. The Town Board acquiesced in that agreement and the present petition is an outgrowth of that compromise.

To me, and I believe to the Town Board, the compromise is almost as distasteful as the dispute it settled. The Satmar Hasidim has taken advantage of an obviously archaic State statute to slip away from the Town's enforcement program without the Town having the slightest possibility of commenting on the inappropriate reasons for formation of the new village. Were the village proposed prior to the accusations or after they were adjudicated, it would be a different matter, but to utilize the self incorporation procedure during the pendency of a vigorously

litigated issue in which the Town has accused the Satmar community of serious and flagrant violations of its Zoning Law, is almost sinister and surely an abuse of the right of self incorporation. I do not believe that the authors of the 106 year old Village Law ever dreamed it would be used for this purpose.

Be that as it may, I am left with the hollow provisions of the Village Law which allow me only to review the procedural niceties of the petition itself. Those niceties are politely set forth in Section 2-206 of the Village Law.

At the public hearing objections were raised as to the validity of the corporate signatures. The essence of the objection is that there is no certificate of authenticity evidencing the signators authority to sign and affix the corporate seal. It is true, there is none. It is also true that for the corporation "Monfield Homes, Inc.", owner of the bulk of the land within the territory, the signature itself is virtually illegible and it is not identified by a typewritten or printed name under the signature itself. This is strange in that all the individual signators are so identified. Yet it is noted that the corporate seal for each corporation is affixed. That in and of itself is a presumption that the signator had authority of the Board of Directors to sign and affix the seal (Section 107 Business Corporation Law). Furthermore, the legislature did not require a certificate of authenticity when specifically setting down how the petition was to be executed (Section 2-202 Village Law). Any such certificate would be surplusage and would evidence proof more than is called for. Cf. Skidmore College v. Cline, 58 Misc. 2d 582, 296 N.Y.S.2d 582 (Sup. Ct., Broome Co., 1969). There was no proof put forth at the hearing to rebutt the presumption of Section 107 Business Corporation Law and the dictates of the statute were carried out. I reject this objection.

The balance of the objections put forth at the hearing and outlined in the written objections of Lillian Roberts submitted at that hearing go to the questionable public interest of that proposal. While the boundaries of the new village may be distorted and the property rights of the objectant somewhat endangered, I am foreclosed from entertaining or ruling on such objections, cf. Rose v. Barraud, 61 Misc. 2d 37, 305 N.Y.S.2d 721, aff'd. 36 A.D.2d 1025, 322 N.Y.S.2d 1000. As much as I would like to deal with the public interest question of this proposal and how I feel that it will endanger an otherwise rural residential neighborhood of Monroe, by law, I cannot. I therefore must reject these objections also.

Although not in writing, there were objections put forth at the hearing relating to the failure of the map submitted with the petition to show the Monwood Lake or pond and the corresponding property right of the objectants to that Lake or pond. There is no requirement for a boundary map, no less the showing of ponds or other topographical features. A boundary map is optional (Section 2-202 1.C (1) Village Law), if the petition is supported by a metes and bound description. Aside from the fact that it is not in writing, I must reject this objection also. I find the petition to otherwise conform with the requirements of Section 2-202 of the Village Law.

Accordingly, I will approve the petition as I must within the limits of the law I am given to work with. With this approval I hope that a new era of well being will spring up between the Satmar community and the rest of Monroe and that the Satmar will realize that in order to survive at all in Monroe or elsewhere they must begin to adopt to some of the ways of life of the people in whose midst they have chosen to reside. For the Satmars to believe that they are

above or separate from the rules and regulations that Monroe has chosen to live by or try to impose their mores upon the community of Monroe, or to hide behind the self-imposed shade of secrecy or cry out religious persecution when there is none, will only lead to more confrontations as bitter as the one this decision purports to resolve. I hope that will not be the case.

The petition is approved and the Town Clerk is hereby directed to begin the procedures for an election within the subject territory, in the manner proscribed by law.

Dated: December 10, 1976
Monroe, New York

/s/ William C. Rogers
William C. Rogers
Supervisor, Town of
Monroe

MONROE-WOODBURY CENTRAL SCHOOL DISTRICT

Resolution of Board of Education

Special Meeting
June 27, 1989

Motion was made by Barbara Moynihan to endorse, support and request passage of Assembly Bill #A8747, the enactment of which will create a public school district with boundaries contiguous with the political boundaries of the incorporated village of Kiryas Joel.

Motion seconded by John Geraghty.

The following board members were present and voted unanimously to approve the resolution:

Roberta Murphy, Board President
Barbara Moynihan, Vice President
John Geraghty
Christopher Kelly
Joseph Maiorana
Hugh McElroen
Eileen Monahan
Carl Onken
Dennis Todd

The following board members elect were also present and expressed support of the above resolution:

Kevin Carberry
Paul Furey

Absent: Carl Gold

I certify that the above is true and accurate.

/s/ Ilene E. Gilmore
Ilene E. Gilmore, District Clerk
pro tempore

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

[LETTERHEAD OF JOSEPH R. LENTOL,
ASSEMBLYMAN 50TH DISTRICT,
KINGS COUNTY]

July 7, 1989

Dear Governor Cuomo:

I write regarding Assembly Bill 8747 which establishes a new union free school district in Orange County. This legislation ends years of legal battles between the Monroe-Woodbury School District and the residents of the village of Kiryas Joel over how to provide state funded special education programs to the Hasidic children of the county.

The hasidic jewish community hold firmly to its religious tenets. With the enactment of this legislation, bureaucratic entanglements that have prevented the delivery of special education programs to the hasidic kids of the village of Kiryas Joel will end.

In an honest attempt to create access for a group of children, the Monroe-Woodbury School Board voted unanimously in favor of this bill; and the local newspaper in an eloquent editorial acknowledged efforts by all parties to try to solve the problem and, therefore, wholeheartedly offered its support.

As the Assembly sponsor of this legislation, I urge you to grant Executive approval to this legislation. I have enclosed additional information for your review. If you have additional questions, please contact me in my Brooklyn office.

Sincerely,

/s/ Joseph R. Lentol
Joseph R. Lentol

Governor Mario Cuomo
Executive Chamber
State Capitol
Albany, NY 12224

MONROE-WOODBURY CENTRAL SCHOOL DISTRICT

July 12, 1989

Mr. Evan Davis
Counsel to the Governor
Executive Chamber
Albany, NY 12224

Dear Mr. Davis:

On behalf of myself and the entire school board of the Monroe-Woodbury Central School District, I recommend that the governor approve bill #A8747 which creates a school district within the geographic boundaries of the Village of Kiryas Joel. We believe that this bill is advantageous to both communities and it is clearly the desire of both communities that the bill become law.

Because this is in some ways a special situation, it is important to state some basic facts and understandings. The Kiryas Joel community is an incorporated village with a rapidly growing population. In existence for about twelve years, they now have more that 3000 school age children -- all in private parochial schools -- and no doubt will increase by several thousand over the next few years. No non-Hasidic family lives within Kiryas Joel.

It is our understanding that the Kiryas Joel school system will, in effect, be a non-operating school district except for special education services. All other children will

continue to attend their private parochial school and local property taxes and state aid could not and would not be a factor in supporting these schools. If a non-Hasidic child requiring regular education moved into the Kiryas Joel school district's geographic boundaries (and this is virtually impossible) the child would be tuitioned to Monroe-Woodbury or another district.

Handicapped children would be educated utilizing property taxes and appropriate state aid. This special education program would have to conform to all the laws and regulations which govern any other public school.

Our board strongly supports this bill in part because it will allow for the proper education of the Kiryas Joel handicapped children. Also we do not believe that it was ever envisioned that a public school system like Monroe-Woodbury would have within its borders a parochial school population within a specific geographical area (an incorporated village) that eventually will be several times larger than the public school student population. The creation of a separate school district will serve to reduce community tension and lead to productive relationships.

From a financial point of view, Monroe-Woodbury will lose the village property taxes. However, our costs will be reduced and eventually there will be some relatively small modification in state aid as without the Kiryas Joel property wealth and income wealth behind each public school child we will be a poorer district. In the long run we do not anticipate significant loss.

Although created for a unique set of reasons, the new Kiryas Joel school district should be viewed as any other school district in the state. Whatever programs they choose

to run will be governed by the laws and regulations of New York State. I ask for the favorable disposition of this bill and would be pleased to clarify any outstanding issues.

Sincerely,

/s/ Daniel Alexander
Daniel Alexander
Superintendent of Schools

DDA: ig

[Emblem] New York State
Council of School Superintendents

[LETTERHEAD OMITTED]

July 12, 1989

The Honorable Evan Davis
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Dear Mr. Davis:

On behalf of the NYS Council of School Superintendents we have no opposition to A 8747, Lentol, which will establish a new school district in the village of Kiryas Joel.

As with all school districts in New York State, the Kiryas Joel school district should comply with all rules, regulations, and statutes in New York. The establishment of this new district should not be a mechanism for non-compliance of the rules, regulations & statutes which govern public education.

We appreciate the opportunity to provide input on this matter.

Sincerely

/s/ John H. Bennett
John H. Bennett
Executive Director

JHB/k

THE STATE EDUCATION DEPARTMENT/ [Emblem]
The University of the State of
New York/Albany, N.Y.12234
Counsel and Deputy Commissioner
for Legal Affairs

July 19, 1989

TO: Counsel to the Governor

FROM: Robert E. Diaz /s/

SUBJECT: A.8747

RECOMMENDATION: Disapproval

REASON FOR RECOMMENDATION:

This bill would create a new Union Free School District in the incorporated village of Kiryas Joel, in the town of Monroe. The bill also establishes a board of education composed of five to nine members elected by the voters of the village who would serve for a period not to exceed five years. The act is to take effect on July first next succeeding the date in which it becomes law.

In creating a new school district, this legislation is defective in that it does not contain the provisions necessary to establish its first board of education. The bill does not establish a specific time for an election, the exact number of board members to be elected initially, prescribe the exact length of their terms of office, or provide for the election of board members in staggered terms of office so that an equal number of members would be elected to the board each year

in accordance with Education Law §1702(1). Because there is no mechanism in the bill for determining how many board members would be elected to the first board of education, the board could not be legally constituted and there would be no legal basis for determining how many board members constitute a quorum or how many votes constitute a majority of the board for purposes of determining whether the board had taken action. Because the bill does not specify whether board members would serve for 3, 4 or 5 year terms, there would be no legal basis for electing the members of the first board of education for a particular term of office. Accordingly, the bill is defective in its establishment of a new union free school district and should be disapproved.

In addition to technical defects in the bill, the State Education Department has broader concerns about the establishment of a public school district that would be coextensive with the village of Kiryas Joel. In a recent decision of the Court of Appeals in Board of Education of the Monroe-Woodbury CSD v. Wieder, 72 NY2d 174, 179 (1988), which addressed a dispute over whether pupils with handicapping conditions residing in the village of Kiryas Joel should be provided services in the public schools, in the religiously affiliated private schools they attend or at a neutral site, the village was described as follows:

> "Kiryas Joel is a community of Hasidic Jews. Apart from [it's] separation from the outside community, separation of the sexes is observed within the village. Yiddish is the principal language of Kiryas Joel; ...." Board of Education of the Monroe-Woodbury CSD v. Wieder, 72 NY2d 174, 179.

The court went on to characterize the education of the village's children as follows:

> "...Satmarer children generally do not attend public schools, but attend their own religiously affiliated schools within Kiryas Joel. Boys are enrolled in the United Talmudic Academy (UTA) and girls in Bias Rochel, a UTA affiliate. With an apparent over-all goal that children should continue to live by the religious standards of their parents, Satmarer wants their school to serve primarily as a bastion against undesirable acculturation, as the training ground for Torah knowledge in the case of boys, and in the case of girls, as a place to gather knowledge they will need as adult women.' (citation omitted)" Id., at 179-80.

Census data obtained from the Orange County Department of Planning establishes that every inhabitant of Kiryas Joel is white. As the decision of the Court of Appeals described above confirms, all of its inhabitants are members of one religious sect, the Satmarer Hasidim. In addition, the superintendent of schools of the Monroe-Woodbury Central School District, the district in which Kiryas Joel is currently included, reports that only one student who lives in Kiryas Joel is enrolled in the public schools. All of the remaining school age children living in the village attend private religious schools located within the confines of the village. It should be noted that geographically, the village of Kiryas Joel is well within the boundaries of the Monroe-Woodbury Central School District.

Given the goal of maintaining diversity among the pupils enrolled in the public schools and ensuring that school district boundaries are not drawn in a manner that segregates pupils along ethnic, racial or religious lines, this legislation cannot be supported. Encouraging heterogeneity in the schools is important because it prepares pupils to function in the larger society by fostering tolerance and understanding among children with different backgrounds. In addition, providing such opportunities for children at an early age is critical to a healthy coexistence among the many diverse subcultures that make up our society. Educationally, it is important because it fosters equal opportunities for all children in an environment that provides for the richness of the experience that comes with such diversity.

Because inhabitants of Kiryas Joel have not sent their handicapped children into the public schools, the children of Kiryas Joel have been without special educational services since the Court of Appeals held in the Wieder case that the Monroe-Woodbury school district was neither compelled to provide special education services to their children on the grounds of the private religious school or at a neutral site. It appears that this legislation was advanced in order to allow the newly created school district to provide special education services to children within the district.

Given the nature of the dispute that apparently prompted this legislation, this bill also raises serious constitutional questions regarding potential governmental furtherance of religion in violation of the First Amendment's provision requiring the separation of Church and State. Although representatives of the village assert that they will take extraordinary care to create a special education school devoid of any religious message or teaching, the State would be accommodating the religious beliefs of a particular

religious sect by enacting legislation that furthers its decision to insulate the children of the village from the larger society.

If the real reason for establishing the school district of Kiryas Joel is to establish a separate school for handicapped children, as is apparently the case, such purpose would also be inconsistent with both state and federal laws which entitle these children to a free appropriate education in the least restrictive environment. The least restrictive environment is defined, in part, as one that allows a handicapped child to be educated with non handicapped peers to the maximum extent appropriate (8 NYCRR §200.1[t][2]). Only in those few cases where it is determined by a committee on special education that the individual needs of the child warrant a segregated setting (which is the most restrictive placement) would such a placement be deemed appropriate.

In addition, it must be noted that Union Free School Districts are not expressly authorized under existing statutes to create such schools. Section 1709(24) of the Education Law authorizes a union free school district to provide special classes as defined under §§4401 and 4402 of the Education Law. Section 4401 of the Education Law distinguishes between the creation of special education classes within the public school district and the authority of the union free school district to contract with BOCES and private schools for the education of certain handicapped children who require educational programs in separate school buildings (Educ. Law §4401.2[c][f]).

The existing statutory scheme is not only part of the State Plan approved by the United States Department of Education as required by federal law, it is entirely consistent with both state and federal law mandates that require

placement of handicapped children in the least restrictive environment (20 USC §1401 et seq). By limiting the authority of public schools to create separate schools for handicapped children and requiring the approval of the Commissioner as a prerequisite for placement of such children in segregated facilities, the legislature has created a further check to ensure that only those children who require such settings are placed there.

For all of the above reasons, the State Education Department recommends disapproval of this legislation.

10 DAY BILL

B-201 BUDGET REPORT ON BILLS Session Year 1989

SENATE	Introduced by:	ASSEMBLY
No.	Members of Assembly Lentol and Pataki	No. 8747

Law: Special Act Sections:

Division of the Budget recommendation on the above bill:

Approve:___ Veto: X No Objection:___
No Recommendation: ___

1-2. Subject, Purpose and Summary of Provisions:

To establish, by special act, the Kiryas Joel Village School District as a separate school district coterminous with the boundaries of the Village of Kiryas Joel, Town of Monroe, Orange County. Such school district is to have all the powers and duties of a union free school district.

If enacted this year, this bill will take effect July 1, 1990.

3. Legislative History:

This appears to be new legislation.

4. Arguments in Support:

At present, the territory of the Village of Kiryas Joel is located within the Monroe-Woodbury Central School District. Since its establishment as an Hasidic Jewish community in Orange County, and its subsequent incorporation as a separate village in 1977, the Hasidic residents of Kiryas Joel have expressed a number of significant concerns to the Monroe-Woodbury school district regarding the transportation and education of their handicapped pupil population. These concerns are primarily attributable to the religious precepts of the Hasidic sect prohibiting the intermingling of male and female children in such situations.

It is our understanding that the intent of this legislation would permit a new Kiryas Joel school board to establish a public school within its boundaries for handicapped pupils only (estimated to serve 100 out of a total pupil population of 3,800). The nonhandicapped student population of Kiryas Joel, which would also come under the general oversight of this new public school board, is expected to continue to attend private schooling currently provided in the Village, with any nonhandicapped students desiring a public school program being "tuitioned-out" to the Monroe-Woodbury school district.

This bill provides a vehicle for resolution of the current conflict between the Monroe-Woodbury school district and the residents of Kiryas Joel through the establishment of the subject school

district, with its own tax base and State aid entitlements. While removing a portion of Monroe-Woodbury's tax base from its rolls, it would also remove a costly (handicapped) educational component from Monroe-Woodbury's budget and the transportation expenses related thereto.

By resolving this issue consistent with the wishes of the involved groups at the local level, it can be argued that this bill is consistent with the State's policy of local control in educational matters. This philosophy is effectively summarized in the 1982 Court of Appeals decision in Levittown v. Nyquist, which states:

> For all of the nearly two centuries that New York has had public schools, it has utilized a statutory system whereby citizens and the local level, acting as part of school district units containing people with a community of interest and a tradition of acting together to govern themselves, have made the basic decisions on funding and operating their own schools. Through the years, the people of this State have remained true to the concept that the maximum support of the public schools and the most informed, intelligent and responsive decision-making as to the financing and operation of those schools is generated by giving citizens direct and meaningful control over the schools that their children attend.

5. Possible Objections:

This bill, which gives the new Kiryas Joel school district all the powers and duties of a regular union free school district, if enacted, could establish an undesirable precedent whereby other sects or groups could seek a special legislative chapter to create public school districts in cases where such groups have become disenchanted with the education offered in their existing public school district.*

Furthermore, it can argued that the creation of the Kiryas Joel Village school district could be perceived as an attempt to partition a portion of an existing local property tax base and redirect such funding to support what may constitute a highly private educational purpose. In addition to partitioning off a portion of the local public tax base, the creation of a public school district would also generate additional State aid. (See Item 8 below.)

It can also be strongly argued that the establishment of this new public school district, for the purpose of establishing a separate (public) school for

---

* At present, union free school districts are established pursuant to the provisions of sections 1522 and 1523 of the Education Law (through petition for request to establish a district, public notice of meeting, public meetings, etc.). Although the Legislature has previously established 16 so-called "special act union free school districts" to provide special education services to handicapped pupils and persons in need to supervision (PINS), these districts do not have their own local real property tax base, taxation powers, or their own local school population. All pupils at such schools are placed by other local school districts, social services districts, or the Family court, and such districts are eligible for only building and transportation aid.

handicapped children, would run afoul of existing State and Federal laws entitling such children to a free and appropriate education in the least restrictive environment. As has been pointed out by the State Education Department, the least restrictive environment is defined, in part, as one that allows a handicapped child to be educated with nonhandicapped pupils to the maximum extent appropriate. The manner in which this handicapped program is to be established appears to preclude the possibility of permitting the placement of such students in less restrictive environments.

Although the Kiryas Joel School Board will be legally bound to operate its programs in accordance with Education Law and Commissioner's Regulations, this unique arrangement will no doubt present the State Education Department with an extraordinary complex task to monitor/audit the operations of this school district to ensure compliance with law. The special circumstances under which this school district has been created may also invite constitutional challenges regarding the possibility of excessive government entanglement with religion.

Further, it can be argued that the creation of a new, small school district runs counter to the State's long-standing goal of encouraging greater economy and efficiency through the consolidation of small school districts.

6. Other State Agencies Interested:

State Education Department
Department of Taxation and Finance

State Board of Equalization and Assessment
Office of the State Comptroller

7. Other Interested Groups:

The New York State School Boards Association has indicated it will be taking no position on this bill but notes that the Monroe-Woodbury school district supports it.

8. Budget Implications:

Based on local wealth data provided by the Monroe-Woodbury school district, and assuming that the 100 special education pupils in the Kiryas Joel school district will be placed in programs qualifying for the high cost component of excess cost aid, we estimate a new Kiryas Joel school district budget of about $1.3 million and new State aid of about $400,000-$450,000. This would leave a local tax bill of about $900,000. Since Monroe-Woodbury attributes about $1.4 million of its tax base to the Village of Kiryas Joel, it appears that the Village's tax payers will benefit from both new State aid and lower, local property taxes as a result of the creation of the new district.

Also based on data supplied by Monroe-Woodbury (and current data available from the State Education Department), we estimate that the loss of property and income wealth attributed to the Village of Kiryas Joel will make Monroe-Woodbury poorer to the extent that it will receive operating aid on a formula basis rather than on save-harmless, as it now does. While the increases in State aid to Monroe-

Woodbury, due to its then lower wealth, would not occur until the 1991-92 school year, we project such State aid increases would amount to $1.4 million.

9. Recommendation:

Based on the fiscal implications of this bill and the undesirable precedent it could establish for the proliferation of other specifically delineated school districts, we recommend this bill be disapproved.

Date: July 21, 1989 Examiner: /s/ Illegible
Disposition: Chapter No. Veto No.

[Emblem] THE ASSEMBLY
STATE OF NEW YORK
ALBANY

[LETTERHEAD OF SHELDON SILVER,
ASSEMBLYMAN 62ND DISTRICT,
NEW YORK COUNTY]

July 24, 1989

Honorable Mario Cuomo
Executive Chamber
Albany, New York

RE: A.8747

Dear Governor Cuomo:

I am writing to express my strong support for A.8747 which is now awaiting your action.

The bill, if enacted into law, would provide much needed assistance to Hasidic handicapped children residing in the Village of Kiryat Yoel. These youngsters are not getting certain special educational services to which they are legally entitled because the local school board under whose jurisdiction they currently fall have refused to provide these services outside of regular special education programs conducted as part of regular public school programs. Our Court of Appeals has ruled recently that current law, indeed, does not require that these services be provided outside of the existing public school programs.

The bill represents a legislative response to that decision by providing a mechanism through which students will not have to sacrifice their religious traditions in order to receive the services which are available to handicapped students throughout the State.

I am aware that opponents of the bill are raising arguments that this accommodation is violative of the First Amendment. As one who has sponsored many measures seeking to reasonably adjust standard societal practices in order to permit the full participation of religious minorities in the life of our State I have, as you have, heard this argument before. I commend to your attention the fact that it has generally proven to be groundless. I am confident that the same will obtain in this instance.

During your first year as Governor you signed the now famous "GET" law which has helped thousands of women in this State. You did that in spite of hysterical outcries of entanglement. During the past six years that bill has survived the constitutional test. I am confident that the one before you will likewise survive.

Very truly yours,

/s/ Sheldon Silver
SHELDON SILVER
Member of Assembly

SS/smw

FOR RELEASE:
IMMEDIATE, TUESDAY
July 25, 1989

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

July 24, 1989

MEMORANDUM filed with Assembly Bill Number 8747, entitled:

#58 (Chapter 748) "AN ACT to establish a separate school district in and for the village of Kiryas Joel"

APPROVED

The bill establishes a separate school district for the village of Kiryas Joel located in the town of Monroe, Orange County. The district is placed under the control of a board of education composed of from five to nine members. It is regarded by opponents and proponents alike as a practical solution to what has been, so far, an intractable problem.

Lawyers for the State Education Department argue that the bill may be held to be unconstitutional. My Counsel disagrees and advises that the bill is, on its face, constitutional. I am persuaded by my Counsel's view.

The bill is an effort to resolve a longstanding conflict between the Monroe-Woodbury School District and the village of Kiryas Joel, whose population are all members of

the same religious sect. Almost all of the approximately 3,000 school age children of Kiryas Joel attend private religious schools. However, the village has sought to obtain from the public school district special education services for handicapped children.

Under our Constitution as interpreted by the Supreme Court of the United States such special education services may not be provided at the religious school but may be provided at a neutral site that is not a public school.

There came a time when the school district refused to provide such services to the handicapped children of Kiryas Joel at a neutral site and instead insisted that the children receive the services at a public school. The parents of these children sent them to the public school for a brief period but ultimately refused to continue to do so.

Litigation arose and our Court of Appeals held that the school district could not be compelled to provide special education services at a neutral site. As a result, the approximately 100 handicapped students in the village are not now receiving the special education services they need.

I believe that this bill is a good faith effort to solve this unique problem. And, as noted above, I am advised it is facially constitutional. Of course this new school district must take pains to avoid conduct that violates the separation of church and state because then a constitutional problem would arise in the application of this law. The village officials acknowledge this responsibility. I believe they will be true to their commitment.

The village of Kiryas Joel, the Monroe-Woodbury Central School District and the Orange County Executive recommend approval.

The bill is approved.

(Signed) Mario M. Cuomo

STATE OF NEW YORK
SUPREME COURT
COUNTY OF ALBANY

LOUIS GRUMET, individually and as Executive Director of the New York State School Boards Association, Inc.; ALBERT W. HAWK, individually and as President of the New York State School Boards Association, Inc.; and the NEW YORK STATE SCHOOL BOARDS ASSOCIATION, INC.,

Plaintiffs,

v.

NEW YORK STATE EDUCATION DEPARTMENT; THOMAS SOBOL, as Commissioner of the New York State Education Department; NEW YORK STATE BOARD OF REGENTS; EDWARD V. REGAN, as New York State Comptroller; EMANUEL AXELROD, as District Superintendent of Orange-Ulster BOCES; BOARD OF EDUCATION OF THE KIRYAS JOEL VILLAGE SCHOOL DISTRICT; BOARD OF EDUCATION OF THE MONROE-WOODBURY CENTRAL SCHOOL DISTRICT,

Defendants.

Index No. 1054-90
RJI No. 0190-021649

Assigned Justice:

SECOND AMENDED COMPLAINT

Plaintiffs by their attorneys, Jay Worona, Esq., Deputy Counsel and Director of Litigation Services and Cynthia Plumb Fletcher, Esq., Assistant Counsel, for the New York State School Boards Association, as and for a second amended complaint, amended by order and direction of the court upon hearing argument on motions to intervene in open court on April 19, 1990, respectfully allege as follows that:

PARTIES

1. Plaintiff Louis Grumet is a resident of New York State who resides at 123 Lincoln Avenue, Altamont, New York, and has paid and is paying both state income and state sales taxes. Plaintiff Grumet is thus a "citizen-taxpayer" as defined in Article 7-A of the State Finance Law and as such is a person who is and may be affected or specially aggrieved by the activity herein referred to, and maintains this action for declaratory relief and permanent injunction against officers and employees of the state who in the course of their duties have caused, are now causing and are about to cause a wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property.

2. Plaintiff Grumet is Executive Director and chief executive officer of the New York State School Boards Association, Inc. (hereinafter also referred to as "NYSSBA" or "the Association"), and also maintains this action on behalf of NYSSBA and its members, as authorized by direction of NYSSBA's President after consensus was reached by the Board of Directors on January 6, 1990, and

by ratification of the Board of Directors on February 16, 1990.

3. Plaintiff Albert W. Hawk is a resident of New York State who resides at 52 Lincoln Avenue, Dansville, New York, and has paid and is paying both state income and state sales taxes. Plaintiff Hawk is thus a "citizen-taxpayer" as defined in Article 7-A of the State Finance Law and as such is a person who is and may be affected or specially aggrieved by the activity herein referred to and maintains this action for declaratory relief against officers and employees of the state who in the course of their duties have caused, are now causing and are about to cause a wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property.

4. Plaintiff Hawk is President of NYSSBA and serves without compensation as chairman of the Association's Board of Directors, and also maintains this action on behalf of NYSSBA and its members, as authorized by consensus of the Board of Directors on January 6, 1990 and by ratification of the Board of Directors on February 16, 1990.

5. Plaintiff NYSSBA is a not-for-profit membership corporation incorporated under the laws of the State of New York located at 119 Washington Avenue, Albany, New York, whose membership consists of approximately 760 or 98 percent of the public school districts of New York State. Pursuant to Section 1618 of the Education Law of New York State, NYSSBA has the responsibility of devising practical ways and means of obtaining greater economy and efficiency in the administration of public school district affairs and projects. As such, NYSSBA is duly authorized to conduct programs

and activities in the interest of its member school districts. See Op. Counsel, 1 Ed.Dept.Rep 718 (1951).

6. One activity conducted by NYSSBA on behalf of its members is the submission of amicus curiae briefs and the institution of legal actions where the decisions in such cases will have relevant statewide or national significance for NYSSBA's members, New York State school districts, and public school districts throughout the United States. NYSSBA has participated in many state and federal judicial and administrative proceedings involving both the New York State and the nation's public schools. In all instances, NYSSBA's decision to participate in litigation is dependent upon whether the outcome of the action will have statewide significance that will have an impact upon the Association's members.

7. Included among those cases in which NYSSBA has participated are Matter of Bd. of Educ., Commack Union Free School District v. Ambach, 70 NY2d 501 (1987); Bd. of Educ., Monroe-Woodbury Central School District v. Wieder, 132 AD2d 409 (2d Dept. 1987), mod. 72 NY2d 174 (1988); NYSSBA v. Corchran, S.Ct., Alb. Co., No. 3132-89 decision dated Nov. 3, 1989; New York State School Boards Assn. v. Sobol, Supreme Court, Albany County, No. 6657-89, filed Oct. 24, 1989, decision pending; Detsel v. Bd. of Educ. of the Auburn Enlarged City District, 820 F2d 587 (2d Cir. 1987); Catlin v. Ambach, 820 F2d 588 (7th Cir. 1987); Mozert v. Hawkins County Public Schools, 827 F2d 1058 (6th Cir. 1987). Many such actions have involved issues similar to those of the instant case including, but not limited to, constitutional separation of church and state, statutory validity, and state and federal laws regarding the education of children with handicapping conditions. The issues in the

present case also have great statewide significance to plaintiff Association's members.

8. Plaintiff NYSSBA's board of directors, at its September 15, 1989, at its January 6th, 1990 meeting, and at its February 16, 1990 meeting, discussed the implications of Assembly Bill No. 8747, recently signed into law and recorded as Chapter 748 of the Laws of 1989, which is the subject of this action (hereinafter also referred to as "the bill"). Plaintiff Association's board of directors discussed the state-wide importance of the constitutional and statutory issues implicated by the subject legislation, and the implications of these issues on the governance of the education of all children in New York State. The Association's board further considered the dangerous precedent which will be set by the subject legislation. One such precedent will be the creation, on behalf of a special interest group, of a public school district comprised of a culturally, ethnically, and religiously isolated population.

9. As a result of the above-described discussions, at its January 6, 1990 meeting, the plaintiff Association's board of directors reached a consensus and its president directed its Executive Director, plaintiff Louis Grumet, to pursue this present action contesting the constitutional and statutory validity of Chapter 748 of the Laws of 1989 which involves issues affecting the interests of plaintiff's member school boards. (Draft of Minutes of Board of Director's January 5-6th 1990 meeting, attached hereto as Exhibit A).

10. On January 19, 1990, this action was commenced by personal service of a Summons and Complaint on all the named defendants in this action, and on the New York State Attorney General. An Answer to the Complaint by the Attorney General on behalf of all the

named defendants was served on plaintiffs and received on February 14, 1990.

11. At its February 16, 1990 meeting, plaintiff NYSSBA'S Board of Directors formally ratified and authorized any and all past, present and future action taken by NYSSBA's staff on behalf of the Association in regard to its challenge of the constitutionality and validity of Chapter 748 of the Laws of 1989. (Draft of minutes of Board of Directors February 16, 1990 meeting attached hereto as Exhibit B).

12. Defendant Thomas Sobol, as Commissioner of Education (hereinafter referred to as "the Commissioner"), is the chief executive officer of the State Education Department and of the Board of Regents, and is charged with specific powers and duties including the enforcement of all general and special laws relating to the education system of the state and the execution of all educational policies determined by the Board of Regents. (Educ. L. sec.305).

13. Defendant Board of Regents governs and exercises the corporate powers of the University of the State of New York (Educ. L. sec.202), and is authorized "to encourage and promote education" (Educ. L. sec.201), to "exercise legislative functions concerning the education system of the state," and to approve any "rules or regulations or amendments or repeals thereof, adopted or prescribed by the Commissioner of Education." (Educ. L. sec.207).

14. Defendant State Education Department is an administrative agency of the State of New York, and is charged with the general management and supervision of all public schools and of all of the State's educational work, including the exercise of all powers and duties of the

Commissioner of Education and the Board of Regents. (Educ. L. Art.3).

15. Defendant Edward V. Regan, as Comptroller of the State of New York, is the chief fiscal officer of the State and chief administrative officer of the Office of the State Comptroller (OSC), an independent, constitutional office. (N.Y.S. Const. Art.V, sec.1). The Comptroller has the duty to audit all moneys of the State and all moneys in the possession, custody or control of any officer, agent or agency of the State, before such moneys may be paid, expended or refunded. (State Finance L. sec.111). The defendant Comptroller is thus charged with the audit and control of any state moneys appropriated by the State Education Department for New York State's public school districts.

16. Defendant Emanuel Axelrod is Executive Officer of the Orange-Ulster Board of Cooperative Educational Services (hereinafter referred to as "BOCES"), and District Superintendent of the Orange-Ulster Supervisory District. As part of defendant Axelrod's responsibilities, he oversees the establishment of new school districts within his jurisdiction, including but not limited to, the Kiryas Joel Village School District at issue in this case.

17. Boards of Cooperative Educational Services exist, and are created for the purpose of carrying out programs of shared educational services for the schools within their respective supervisory districts and for providing instruction to students within the component districts in such subjects as the Commissioner of Education may approve. Such educational services may include the operation of special classes for children with handicapping conditions (Educ. L. sec.1950).

18. Defendant Axelrod, as District Superintendent, is charged with the general supervision of the dependent school districts within the jurisdiction of the Orange-Ulster Supervisory District. Such supervision includes the appointment of a competent person to fill a vacancy on school boards of any of the school districts within his supervisory district, where such vacancies are not filled by election within thirty days after such vacancies occur (Educ. L. sec.2113).

19. Boards of education of dependent school districts within defendant Axelrod's supervisory district may not appoint their own superintendents of schools without the express recommendation of defendant Axelrod. Boards of education of school districts that have applied for and have met the criteria for attaining "independent school district" status, are authorized to appoint a superintendent of schools without the recommendation of the District Superintendent. (Educ. L. sec.1711).

20. Pursuant to Chapter 748 of the Laws of 1989, the New York State Legislature established a union free school district to be known as the Kiryas Joel Village School District, effective as of July 1, 1990. The school district will be located within the territory of the Village of Kiryas Joel, in the Town of Monroe, Orange County, and will fall within defendant Axelrod's supervisory district.

21. Defendant Board of Education of the Kiryas Joel Village School District was elected on January 17, 1990 by the residents of the Village of Kiryas Joel, under the supervision of Defendant District Superintendent Axelrod and other officials of the Defendant State Education Department.

22. Plaintiffs maintain that Chapter 748 of the Laws of 1989 is defective in that it did not provide for the time or manner of the election of such board. Further, because of the insufficiency of said statute, any action taken by such board on behalf of the Kiryas Joel Village School District prior to the statute's effective date of July 1, 1990, is statutorily unauthorized.

23. The Kiryas Joel Village School District is presumptively a "dependent" school district since such district does not meet the criteria enumerated by the State Education Department which would authorize the district to appoint its own superintendent of schools, independent of the District Superintendent's recommendation. (See "Standards of Enumeration for Authority to Appoint a Superintendent of Schools," memorandum of the State Education Department, attached hereto as Exhibit C).

24. As such the Kiryas Joel Village School District is scheduled to fall within the jurisdiction of the Orange-Ulster Supervisory District, and will be under the general supervision of Defendant District superintendent Emanuel Axelrod. Defendant Axelrod is therefore also charged with the duty of recommending a superintendent of schools for appointment by the Kiryas Joel School Board.

25. Defendant Board of Education of the Monroe-Woodbury Central School District (hereinafter referred to as "Defendant Monroe-Woodbury") is a body corporate, organized and existing pursuant to the Education Law, and as such is responsible for the governance and administration of educational programs and services to students residing within the territorial boundaries of the Monroe-Woodbury Central School District in Orange County, New York. The Defendant Board of Education of the Monroe-Woodbury

Central School District is currently one of plaintiff NYSSBA's member school boards.

26. Currently, the Village of Kiryas Joel is located within the Monroe-Woodbury Central School District, and will continue to be part of such district until July 1, 1990, the effective date of the subject bill, at which time the Village of Kiryas Joel is scheduled to become a separate school district. Thus the children living within the Village are, and have been, entitled to receive a free, public school education at Monroe-Woodbury schools. Furthermore, Kiryas Joel children with handicapping conditions are, and have been entitled to receive free, appropriate educational services at Monroe-Woodbury schools.

27. The Defendant Monroe-Woodbury school board claims to have always stood, ready and willing to provide appropriate educational services to any and all school age children living within the Village of Kiryas Joel, on the premises of the Monroe-Woodbury Central School District's public schools.

28. Upon information and belief, it was and is the intent of the Legislature and of the residents of the Village of Kiryas Joel to establish a public school, pursuant to the provisions of the subject bill, for the sole purpose of educating handicapped children of school age who live within the Village of Kiryas Joel and that the residents will continue to send all other nonhandicapped students to their private religious schools. (See Letter to Gov. Cuomo from Joseph R. Lentol, Assembly Sponsor of A.B. No. 8747, dated July 7, 1989; newspaper articles from The Times Herald Record, Monroe County, dated January 5, 9, 15, 16, 1990; attached hereto as Exhibit D). This population of children with

handicapping conditions is currently estimated at approximately 100 children.

BACKGROUND

29. Kiryas Joel is a community of Hasidic Jews of the Satmar sect. In addition to separation from outside communities, separation of the sexes is observed within the Village, except within the confines of immediate families. Separation of the sexes is also observed within the private religious schools. However, according to Satmar Hasidic beliefs, there is no requirement that children with handicapping conditions be separated by sex while receiving special education services.

30. Yiddish is the principal language of the residents of Kiryas Joel: television, radio and English language publications are not in general use. The dress and appearance of the Hasidim are distinctive -- the boys, for example, wear long side curls, head coverings and special garments, and both males and females follow a prescribed dress code.

31. The Village of Kiryas Joel (hereinafter also referred to as "the Village"), was incorporated in 1977. Its current population of approximately 8500 residents consists exclusively of Satmar Hasidim. As such, the Village of Kiryas Joel is comprised of a culturally, ethnically and religiously isolated population.

32. Upon information and belief, all of the land within the Village is privately owned (see Tax Map of the Village of Kiryas Joel filed with the Village incorporation report submitted to the New York State Department of State, attached hereto as Exhibit E). The village contracts with

surrounding towns and villages for such services as police, fire and highway maintenance.

33. Satmar children of Kiryas Joel do not attend public schools, but attend their own religiously affiliated schools within Kiryas Joel. Two of those private religious schools are the United Talmudic Academy (UTA), which is attended by boys, and Bais Rochel, a UTA affiliate, which is attended by girls.

34. Upon information and belief, all of the Kiryas Joel handicapped children continue to receive special services, under private arrangements.

35. It is a basic tenet of the Satmar Hasidic sect that children should continue to live by the strict religious standards of their parents. "Satmarer want their school to serve primarily as a bastion against undesirable acculturation, as a training ground for Torah knowledge in the case of boys, and in the case of girls, as a place to gather knowledge they will need as adult women." (Rubin, Satmar: An Island in the City, 140 [Quadrangle 1972].)

36. Satmar Hasidim have been involved in three recent court disputes involving the above described religious beliefs, two in federal and one in state courts. Two of these cases involved the Satmar Hasidim of Kiryas Joel.

37. In Parents' Assn. of P.S. 16 v. Quinones (803 F2d 1235 (2d Cir. 1986)), the Second Circuit preliminarily enjoined the implementation of a plan by the New York City Board of Education designed to provide federally-funded remedial education for handicapped girls from the Beth Rochel School in New York City. At the request of the parents of Satmar Hasidic children, the New York City

Board had agreed to close off nine classrooms of a public school, and to dedicate the enclosed area to the exclusive use of Hasidic girls. The teachers were all to be female, Yiddish-speaking public school teachers. In granting the preliminary injunction, the court found a substantial likelihood that parents of public school students would succeed in their challenge to the arrangement under the Establishment Clause of the First Amendment to the federal Constitution. Ultimately the court held the plan to separate the Hasidic students from all other public school students was an unconstitutional accommodation of Hasidic religious beliefs and traditions.

38. In Bollenbach v. Bd. of Educ. of the Monroe-Woodbury Central School Dist. (659 F.Supp 1450 (SDNY 1987)), female bus drivers complained that the Monroe-Woodbury School District, (defendant herein), had violated the Establishment Clause by accommodating the religious beliefs of United Talmudic Academy students in the Village of Kiryas Joel. The accommodation made by Monroe-Woodbury involved the removal of senior, female bus drivers from transportation runs servicing male Hasidic students to their religious school. The District Court found that the deployment of only male drivers had the primary effect of advancing religious beliefs.

39. The third case originated in the spring of 1984, when the Monroe-Woodbury Board of Education, (defendant herein), met with representatives of the Village of Kiryas Joel to develop procedures for the classification and delivery of services to the handicapped children of the Village. After extensive negotiations, the Monroe-Woodbury Board agreed to furnish various services and programs, characterized as "health and welfare" services (see Educ. L. sec.912), at a "neutral site" within Kiryas Joel; actually an

annex to the Bais Rochel school, under the auspices of the UTA. While such services were being provided, the handicapped children of Kiryas Joel were not separated by sex, but were taught exclusively with other Hasidic children.

40. A year later, however, reacting to the United States Supreme Court's decisions in Aguilar v. Felton (473 US 402 (1985)) and School Dist. of Grand Rapids v. Ball (473 US 373 (1985)), the Monroe-Woodbury School Board, (defendant herein), terminated those arrangements. In those cases the United States Supreme Court held that public school teachers could not constitutionally provide educational services to school children on the premises of private, parochial schools.

41. The Monroe-Woodbury Board, (defendant herein), concluded that it could provide appropriate services to Kiryas Joel handicapped children only in the public schools. The Monroe-Woodbury Board proceeded to place the affected children in classes within its public schools, based on individual evaluations made by its Committee on the Handicapped (CSE), pursuant to Educ.L. Art.89).

42. Initially the Kiryas Joel handicapped children attended the public school programs and classes, but after several months, their parents refused to permit them to continue attending the public schools.

43. In November 1985, the Monroe-Woodbury Board of Education, (defendant herein), commenced an action against certain Kiryas Joel parents who were demanding that their handicapped children be provided with educational services at their chosen "neutral site," for a declaration that the Monroe-Woodbury Board lacked statutory authority to provide such services except within regular

public school classes. In that action, entitled Board of Educ. of Monroe-Woodbury CSD v. Wieder, 134 Misc.2d 658 (1987), the Monroe-Woodbury Board asserted that, pursuant to Education Law section 3602-c, a board is authorized to provide the services at issue to children attending nonpublic schools, only in regular classes of the public schools.

44. Despite pending administrative review proceedings instituted earlier by some of the parents of Kiryas Joel handicapped children, those parents joined the Wieder defendants in the litigation, contending that the declaratory relief sought by the Monroe-Woodbury Board, (defendant herein), was inconsistent with its legal obligations. The Wieder defendants demanded both an injunction directing the Monroe-Woodbury Board to furnish services in classes conducted on the premises of the Bais Rochel school their children attended for their normal educational instruction, and damages equal to the parents' own payments for substitute services.

45. Both sides sought summary judgment. The Wieder defendants urged in their submissions that the regular public schools were inappropriate not only because of the need of many of their children for one-on-one services, but also because of the panic, fear and trauma the children suffered in leaving their own community, and in being educated in an environment by and with people whose ways were so different from their own. The Wieder defendants described specific instances of the children's anxiety and distress, contending that the parents felt compelled to withdraw their handicapped children from the services offered in public schools because the emotional toll outweighed the benefits of the programs.

46. The Monroe-Woodbury Board, (defendant herein), in its summary judgment submission, disputed the Wieder defendants' factual assertions, pointing to the progress made by Satmar children of Kiryas Joel who actually attended the public school programs. The Monroe-Woodbury Board detailed efforts to integrate the children and accommodate the parents (including Yiddish-speaking aides and bilingual reports), and concluded that Satmar Hasidic children of Kiryas Joel had been, and could continue to be, appropriately educated in the public schools.

47. The Monroe-Woodbury Board, (defendant herein), also insisted that Education Law section 3602-c(9) leaves school boards no other option but to provide such educational services on public school premises. Section 36O2-c(9) provides that nonpublic school pupils shall be provided educational services in regular public school classes, and not separately from pupils regularly attending the public school.

48. In its decision, the New York State Supreme Court, Orange County, directed the Monroe-Woodbury Board, (defendant, herein), to provide educational services to the Kiryas Joel handicapped children at a site not physically or educationally identified with, but reasonably accessible to the Satmar Hasidic children (134 Misc. 2d 658, 663).

49. The court avoided interpreting section 3602-c(9), either regarding its applicability or its validity, simply holding that the statute could not deny the children's right under constitutional, statutory and decisional law, to services outside regular public school classrooms.

50. The Wieder defendants' claim for damages was dismissed as premature, owing to a failure to exhaust administrative remedies.

51. An appeal was brought before the Appellate Division, Second Department (132 AD2d 409 (2d Dept. 1987)), at which time NYSSBA, (plaintiff herein), entered the Monroe-Woodbury action as an amicus curiae and argued that the alternate site which the Kiryas Joel parents requested for their handicapped children was not truly "neutral" because it was to be utilized exclusively by members of the Hasidic sect. The Appellate Division modified the Supreme Court's decision to the extent of granting the Monroe-Woodbury Board's, (defendant herein), cross motion for summary judgment, and dismissing the Wieder defendants' counterclaim.

52. The Appellate Division also declared that Education Law section 3602-c(9) requires that, to the maximum extent appropriate for the individualized educational needs of each child, the Monroe-Woodbury Board (defendant herein), must provide special education and related services in the regular classes and programs of its public schools, and not separately from public school students (132 AD2d 409, 417-418).

53. In denying the Wieder defendants' counterclaim, the Appellate Division concluded that the "neutral site" contemplated by the Supreme Court's order would in reality contravene the Establishment Clause of the First Amendment.

54. The Appellate Division also observed that, "quite apart from the above discussion, the order and judgment must fall because it constitutes an improper

usurpation of the [Monroe-Woodbury Board's] legislatively ordained authority pursuant to Education Law article 89 to evaluate and place handicapped children in special education programs according to their individual needs (see, Education Law 4402)." (132 AD2d 409, 416).

55. An appeal was brought before the New York State Court of Appeals in which NYSSBA also participated as amicus curiae taking the same position it had taken before at the lower court level.

56. On appeal, the New York State Court of Appeals modified and affirmed the opinion of the Appellate Division. (72 NY2d 174 (1988)). The Court of Appeals held that Education Law section 3602-c(9) does not mandate that a board can only provide special services to private school handicapped children in regular classes and programs of the public schools.

57. However, the Court of Appeals also held that although the Monroe-Woodbury Board, (defendant herein), was not required by Education Law sec. 3602-c(9) to provide educational services to children with handicapping conditions only within the public schools, the board was also not required, as the Wieder defendants contended, to provide services within the Kiryas Joel students' own schools, or even at a neutral site. On this point, the Court indicated that such a general compulsion would be inconsistent with the regulatory scheme of the federal Education of the Handicapped Act (EHA) (20 USC sec. 1400 et seq.) which requires education of handicapped children to occur in the environment that is the least restrictive for each individual handicapped child, and by definition this would not be the least restrictive environment.

58. At the Court of Appeals, the defendants in Wieder also argued that the Monroe-Woodbury Board's public school placement interfered with the free exercise of their sincere religious beliefs, guaranteed by the state and federal Constitutions (NY Const. art I. sec.3; U.S. Const., 1st Amdmt). The Wieder defendants argued that, as a result of compelling their children to attend regular public school classes and programs, they were forced to choose between following the precepts of their religion and foregoing benefits on the one hand, and accepting benefits while violating their religious beliefs on the other.

59. Regarding this issue, the Court of Appeals held that the defendants in Wieder had made no showing that any sincere religious beliefs were threatened by requiring limited public school attendance, only for special services, and that there was therefore no basis for the constitutional right asserted by the Wieder defendants, and recognized by the trial court.

60. The Court of Appeals held that the statutory entitlement to special services does not carry with it a constitutional right to dictate where such services must be offered.

LEGISLATION

61. On July 24, 1989, Assembly Bill Number 8747 was signed into law creating a new union free school district within the territory of the Village of Kiryas Joel, in the town of Monroe, Orange County. (Attached hereto as Exhibit F). This new law, contained in Chapter 748 of the Laws of 1989, will take effect on July 1, 1990.

62. The creation of a school district by special act of the legislature is one of various ways by which a new school district can be created. Upon information and belief, there are approximately 20 school districts created by special act of the legislature.

63. In the past, the legislature has exercised this authority most commonly for the purpose of creating a public school out of part or all of a private, charitable institution which services only handicapped, emotionally disturbed, or other children with special needs. (See, e.g., Town of Greenburgh, UFSD No. 13, Chapter 559 of the Laws of 1972; Town of Mt. Pleasant UFSD, Chapter 843 of the Laws of 1970; attached hereto as Exhibit G).

64. Unlike the school district created by the legislation at issue, school districts created by special act of the legislature for the sole purpose of educating handicapped or other children with special needs are usually coterminous with such private institutions.

65. There are generally no actual residents of such district except residents of the institution, and the district's board of trustees is elected by the institution's private corporate board. Without having actual residents within such district, there is also no tax base. Such school district's funding, therefore, is provided primarily through state and federal funding. In addition, Some local school districts may fund, in part, their resident students who attend such special act school districts. Chapter 566 of the Laws of 1967 provides for the funding of this type of district. Legislation which creates such school districts subsequent to 1967, amends Chapter 566 of the Laws of 1967 (see Chapter 566 of the Laws of 1967, attached hereto as Exhibit H, and see Exhibit G). The Kiryas Joel Village School District, created

by the legislation in question, could not be considered a "special act school district" as referenced in Article 81 of the Education Law, because such legislation does not reference Chapter 566 of the Laws of 1967 as amended.

66. Children who require the special services provided by such schools can only be placed in the institutions comprising these school districts by family courts, social services departments or divisions for youth or other school districts located throughout the state. Such school districts are not intended to service the educational needs of a general, public school population.

67. The Gananda School District, as contained in Chapter 928 of the Laws of 1972 (attached hereto as Exhibit I), is a school district established by special act of the legislature which does not fall within the same category as do the districts described above. For example, the Gananda School District provides general educational services to students in kindergarten through twelfth grade, has a residential tax base, and was carved out of already existing school districts, as opposed to being coterminous with a particular institution.

68. Unlike the Gananda School District, the Kiryas Joel Village School District was not intended to, and upon information and belief, will not service a general public school population and will not provide education for students other than handicapped students. (See Exhibit D).

69. Unlike the bill in question, the Gananda bill that created the Gananda School District was extremely detailed. The bill provided the exact geographical dimensions of the district, specific organization procedures including procedures for the election of the first board of education

pursuant to the Education Law, as well as provisions for the apportionment and payment of state aid. The legislation in question does not contain such provisions.

70. In addition, the Gananda bill specifically provided, consistent with the goals of the Education Law, that an ethnically, culturally, and religiously diverse school district population was to be encouraged. The legislation in question does not contain such provision.

71. Moreover, upon information and belief, the population of Kiryas Joel is exclusively comprised of Satmar Hasidim, and will remain as such because all parcels of land are owned by members of the Hasidic sect. Accordingly, the composition of the Kiryas Joel Village School District population will also consist exclusively of Satmar Hasidim, and will not be ethnically, culturally or religiously diverse.

72. According to a memorandum written by the Governor and filed with the contested Assembly Bill Number 8747, the bill was enacted into law as a "practical solution to what has been an intractable problem." (See "Memorandum filed with Assembly Bill Number 8747," State of New York, Executive Chamber, dated July 24, 1989, attached hereto as Exhibit J). The memorandum indicates that the "intractable problem" refers to a "longstanding conflict between the Monroe-Woodbury School district and the Village of Kiryas Joel, whose population are all members of the same religious sect." The memorandum clearly indicates that the bill was intended to correct a problem which has developed due to religious concerns. In other words, the legislation at issue was intended to accommodate religious concerns.

73. In his Memorandum, the Governor acknowledged that lawyers for the defendant State Education

Department had argued that the bill may be held to be unconstitutional. (See Exhibit J). However, the Governor chose not to accept this viewpoint.

74. The bill jacket which accompanies the bill in question contains numerous memoranda and letters from outside groups, urging the Governor to veto the bill based upon allegations that the bill violates the prescribed separation of church and state. (See, e.g., State Education Department memorandum, dated July 19, 1989; American Jewish Congress memorandum, dated July 13, 1989; New York Civil Liberties memorandum, undated; New York State United Teachers memorandum, dated July 12, 1989; attached hereto as Exhibit K).

75. The bill jacket memorandum by the State Education Department also contains allegations that the bill is statutorily defective and inconsistent with both state and federal laws which entitle handicapped children to a free appropriate education in the least restrictive environment. (See Exhibit K, SED memorandum, citing 20 USC §1401 et seq; 8 NYCRR §200.1[t][2]).

76. The least restrictive environment is defined, in part, as one that allows a handicapped child to be educated with nonhandicapped peers to the maximum extent appropriate (8 NYCRR §200.1[t][2], and see Educ.L. Art. 89 and 20 USC §1401 et. seq.). Only in those few cases where it is determined by a school district's committee on special education that the individual needs of the child warrant the most restrictive placement, would a segregated setting be deemed an appropriate placement. (See Exhibit K, SED memorandum).

77. Upon information and belief, the Kiryas Joel Village School District, which is intended for the sole purpose of providing educational services to handicapped children living within the Village, will not necessarily provide the least restrictive environment for all such children. As a result, the legislation in question violates the express intent and provisions of both state and federal laws relating to the education of handicapped children.

78. The bill jacket also contains the Division of the Budget's recommendation on this bill urging the Governor to veto the bill citing as possible objections that the bill, if enacted could establish, ". . . an undesirable precedent whereby other sects or groups could seek a special legislative chapter to create public school districts in cases where such groups have become disenchanted with the education offered in their existing public school district." (Division of Budget's Report, dated July 21, 1989, attached hereto as Exhibit L).

79. Furthermore, the Division of the Budget indicated that the creation of the Kiryas Joel Village School District could be perceived as an attempt to partition a portion of an existing local property tax base and redirect such funding to support what may constitute a highly private educational purpose. In addition to partitioning off a portion of the local public tax base, the creation of a public school district would also require additional State aid. (See Exhibit L).

80. The Division of the Budget also noted that it can be strongly argued that the establishment of this new public school district, for the purpose of establishing a separate, publicly funded school district for handicapped children, would run afoul of existing state and federal

requirements of appropriate education in the least restrictive environment. (See Exhibit L).

81. In its Report, the Division of the Budget set forth that, although the Kiryas Joel Village School Board will be legally bound to operate its programs in accordance with the Education Law and with the Commissioner's Regulations, this unique arrangement will no doubt present the State Education Department with the extraordinary, complex task of monitoring the operations of this school district to ensure compliance with the law. The special circumstances under which the Kiryas Joel Village School District has been created may also invite constitutional challenges of excessive government entanglement with religion. (See Exhibit L).

82. Upon information and belief, the inhabitants of Kiryas Joel claim their handicapped children are entitled to the special education services which the Court of Appeals in Wieder had held that the Monroe-Woodbury School District, (defendant herein), was not compelled to provide to such children, either on the grounds of the private religious school or at a neutral site.

AS AND FOR A FIRST CAUSE OF ACTION

83. Upon information and belief, the legislation in question was thus advanced in order to create a public school which would provide publicly funded special education services to Kiryas Joel handicapped children within the confines of the Village. The bill in question therefore allows all residents of the Village of Kiryas Joel to acquire the remedy which they sought and were denied in all judicial proceedings based, in part, upon constitutional standards.

84. Upon information and belief, by its enactment of the contested legislation, the State has accommodated and is accommodating the religious beliefs of a particular religious sect. The creation of a school district that will service only children within the Satmar Hasidic village of Kiryas Joel furthers the Hasidim's centrally held religious belief of insulating the children of the Village from the larger, diverse outside society. The bill therefore has as its purpose, and/or will have as its primary effect, the promotion of religion in violation of the Establishment Clause of the First Amendment (Lemon v. Kurtzman, 403 U.S. 602, 612-613 (1971)).

85. Upon information and belief, the bill will also violate the Establishment Clause by causing those state officials and agents charged with the duty of monitoring the newly created school district, to become excessively entangled in matters of religion. (See Lemon, supra).

86. Upon information and belief, since the contested legislation establishing a separate school district for Kiryas Joel follows the Court of Appeals' decision in Wieder, supra, which held that the state was not constitutionally mandated to provide remedial education to handicapped Hasidic children in the parochial school they usually attend; and the U.S. Supreme Court decisions in Grand Rapids and Aguilar, which held that public school teachers could not constitutionally provide educational services on the premises of parochial schools, the unconstitutional intent of the legislation is apparent.

AS AND FOR A SECOND CAUSE OF ACTION

87. Plaintiffs repeat, reiterate and reallege paragraphs numbered one through eighty-one inclusive hereof with the same force and effect as if set forth at length herein.

88. Upon information and belief, the contested legislation is also violative of the 14th Amendment to the U.S. Constitution in that the U.S. Supreme Court has determined that a state may not carve out a new school district from an existing district when such an effort will have the effect of creating a segregated school. (Wright v. Council of City of Emporia, 407 U.S. 451, 92 S. Ct. 2196 (1972); United States v. Scotland Neck City Bd. of Ed., 407 U.S. 484, 92 S.Ct. 2214 (1972)).

AS AND FOR A THIRD CAUSE OF ACTION

89. Plaintiffs repeat, reiterate and reallege paragraphs numbered one through eighty-three inclusive hereof with the same force and effect as if set forth at length herein.

90. Upon information and belief, the bill also violates Article 11, sec.3 of the New York State Constitution in that it authorizes the expenditure of state moneys and resources for purposes of aiding and maintaining a school under the control and direction of a religious denomination, or a school in which a denominational tenet or doctrine will be taught, i.e., the doctrine of keeping Hasidic children separate and apart from the outside community.

91. Upon information and belief, the provision of a public education to an intentionally isolated ethnic, racial and religious group is also in direct contravention of the

stated goals and purposes of the New York State Education Law. (See Exhibit K, memorandum of the SED).

AS AND FOR A FOURTH CAUSE OF ACTION

92. Plaintiffs repeat, reiterate and reallege paragraphs numbered one through eighty-six inclusive hereof with the same force and effect as if set forth at length herein.

93. Upon information and belief, since the legislation in question was enacted solely to establish a separate school for the handicapped children of Kiryas Joel, such purpose is inconsistent with both state and federal laws which entitle handicapped children to a free appropriate education in the least restrictive environment.

AS AND FOR A FIFTH CAUSE OF ACTION

94. Plaintiffs repeat, reiterate and reallege paragraphs numbered one through eighty-eight inclusive hereof with the same force and effect as if set forth at length herein.

95. Upon information and belief, the legislation in question is further defective in that it does not contain the provisions necessary to properly establish a new union free school district.

96. Upon information and belief, the legislation in question fails to provide the authority or procedures for establishing the first Kiryas Joel Village School District board of education.

97. Upon information and belief, due to the lack of proper legislative provision for establishing a new union free school district or the first board of education, action has been taken and public taxpayer dollars and resources have been expended by defendants to establish such school district and board of education including but not limited to the election of school board members, without the proper legal authority, which would constitute an improper delegation of authority and expenditure of state monies and resources in violation of New York State Constitution Article 8, §1.

98. Upon information and belief, any and all action taken with respect to the organization, establishment, maintenance or control of the Kiryas Joel Village School District without specific legislative authority, prior to July 1, 1990, the effective date of the subject legislation, is unauthorized and should be declared null and void since no such action has been provided for prior to that date.

AS AND FOR A SIXTH CAUSE OF ACTION

99. Plaintiffs repeat, reiterate and reallege paragraphs numbered one through eighty-three inclusive hereof with the same force and effect as if set forth at length herein.

100. Upon information and belief, the contested legislation creates an undesirable precedent whereby other sects or groups can now seek a special legislative chapter to create public school districts in cases where such groups have become disenchanted with the education offered in their existing public school district.

101. Upon information and belief, plaintiff has no adequate remedy at law.

WHEREFORE, plaintiffs request that they may have a judgment as follows:

1. That the court declare that Chapter 748 of the Laws of 1989 entitled: "An Act to establish a separate school district in and for the Village of Kiryas Joel" is unconstitutional in that it violates the establishment clause of the First and Fourteenth Amendments, the Equal Protection Clause of the Fourteenth Amendment, and Article 11, section 3 of the N.Y.S. Constitution.

2. That the court declare that Chapter 748 of the Laws of 1989 entitled: "An Act to establish a separate school district in and for the village of Kiryas Joel" is statutorily defective in that it does not properly establish a union free school district pursuant to the provisions contained in the New York State Education Law.

3. That the court declare that any and all actions taken prior to July 1, 1990, the effective date of Chapter 748 of the Laws of 1989, for the purpose of establishing, organizing, maintaining or controlling the Kiryas Joel Village School District are null and void for lack of specific statutory or other legal authority.

4. That the court declare that any and all actions taken prior to July 1, 1990, the effective date of Chapter 748 of the Laws of 1989, establishing the first Kiryas Joel Village School District board of education are an unlawful delegation of authority for lack of specific statutory or other legal authority.

5. That the court declare that Chapter 748 of the Laws of 1989 entitled: "An Act to establish a separate school district in and for the Village of Kiryas Joel" violates the

existing State and Federal laws entitling children with handicapping conditions to a free and appropriate education in the least restrictive environment.

6. That because Chapter 748 of the Laws of 1989 fails to provide specific statutory authority regarding the establishment, organization, maintenance or control of the Kiryas Joel Village School District prior to July 1, 1990, the effective date of Chapter 748 of the Laws of 1989, the court declare that the expenditure of any and all state or local government monies or resources for such purposes violates Article 8 §1 of the New York State Constitution as being an unlawful and unauthorized usage of public monies or resources.

7. That the Court declare that the expenditure of any and all state or local government monies or resources for purposes of aiding or maintaining the Kiryas Joel Village School District, in which the Hasidic tenet or doctrine of keeping Hasidic children separate and apart from outside communities, violates Article 11, §3 of the New York State Constitution.

8. That the court order that the defendants be permanently restrained and enjoined from taking any and all present and future action or expending any and all monies or resources for the purpose of implementing Chapter 748 of the Laws of 1989.

9. That the court order that the defendants be permanently restrained and enjoined from taking any and all present and future action or expending any and all monies or resources that would result in the creation or establishment of a new public school district that will service a select, isolated and religiously, ethnically and culturally nondiverse

population; and/or which would provide educational services to handicapped children other than in the least restrictive environment, pursuant to state and federal law.

10. That the court order that the plaintiffs shall have such other and further relief that the court may deem just and proper, together with the costs and disbursements of this action.

Dated: Albany, New York
April 26, 1990

JAY WORONA, ESQ.
CYNTHIA P. FLETCHER, ESQ.
Attorneys for Plaintiffs
New York State School
Boards Association, Inc.
119 Washington Avenue
Albany, New York 12210
Tel: (518) 465-3474

[TITLE OMITTED IN PRINTING]

AFFIDAVIT OF HON. THOMAS SOBOL,
COMMISSIONER OF EDUCATION

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

THOMAS SOBOL, being duly sworn, deposes and says:

1. I am Commissioner of Education and am the chief executive officer of the state system of education and of the Board of Regents. As such, I am charged with the general supervision over the public schools and maintenance of a statewide system of public education that complies with state and federal law, and the educational policies established by the Board of Regents (Educ. L. § 305). I am personally familiar with the facts set forth herein.

2. The State Education Department (hereinafter also referred to as "SED" or "the Department"), is an administrative agency of the State of New York, and is charged with the general management and supervision of all public schools and of all of the State's educational functions, including the exercise of all powers and duties of the Commissioner of Education and the Board of Regents. (Educ. L. Art.3).

3. The Board of Regents governs and exercises the corporate powers of the University of the State of New York (Educ. L. sec.202), and is authorized "to encourage

and promote education" (Educ. L. sec.201), to "exercise legislative functions concerning the education system of the state," and to approve any "rules or regulations or amendments or repeals thereof, adopted or prescribed by the Commissioner of Education." (Educ. L. sec.207).

4. The Kiryas Joel Village School District (hereinafter also referred to as "KJVSD"), was created by special act of the legislature. Chapter 748 of the Laws of 1989 was signed into law on July 24, 1989 and became effective July 1, 1990. The KJVSD is a dependent school district within the Orange-Ulster Supervisory District, and is a component district of the Orange-Ulster Board of Cooperative Educational Services (BOCES).

5. Emanuel Axelrod is Executive Officer of the Orange-Ulster Board of Cooperative Educational Services, and District Superintendent of the Orange-Ulster Supervisory District. Within the jurisdiction of the Orange-Ulster Supervisory District, Dr. Axelrod has responsibility to oversee the establishment of new school districts, to appoint persons to fill vacancies on school boards where such vacancies are not filled by election within thirty days, and to maintain general supervision over dependent school districts, including recommendations of specific candidates for appointment as school district superintendents to the boards of such dependent districts. Boards of education of dependent school districts may not appoint their own superintendents of schools without such express recommendation.

6. At the time the KJVSD was created by act of the Legislature, it was known that the district was being created in a community that consisted exclusively of inhabitants of the same religious sect. (See, Governor's

Memorandum filed with Assembly Bill No. 8747, attached as Exhibit J to Second Amended Complaint). The KJVSD is the only school district in the State of New York whose inhabitants are all members of the same religious sect.

7. A memorandum, submitted on behalf of the Department to the Governor's counsel on July 19, 1989, reflected my concerns regarding the establishment of the KJVSD and recommended disapproval of the bill. (See, State of Education Department Memorandum, hereinafter referred to as "Department's Memorandum," attached as Exhibit K to Second Amended Complaint).

8. The Department's Memorandum to the Governor's Counsel voiced strong opposition to the legislation, based not only on the insular nature of the school district, but also on the basis that its mere existence raised major constitutional problems. (See Department Memorandum). As the memorandum also indicates, the creation of a school district coextensive with a village inhabited exclusively of individuals of the same religious sect is contrary to public policy which encourages heterogeneity in the schools, as well as

> ...the goal of maintaining diversity among the pupils enrolled in the public schools and ensuring that school district boundaries are not drawn in a manner that segregates pupils along ethnic, racial or religious lines... (See, Department Memorandum at p.3)

9. Another concern expressed in the Department's Memorandum was the fact that the legislation circumvents the Court of Appeals decision in Monroe-Woodbury v. Wieder, 72 NY2d 174 (1988), wherein the Court rejected the

claims of the residents of Kiryas Joel to have their children with handicapping conditions educated either on the grounds of their parochial school or, at a minimum, within the boundaries of their village.

10. As the Department's Memorandum indicates, from the time of the Court of Appeals decision, until the creation of the KJVSD, the inhabitants of Kiryas Joel had not sent their handicapped children into the public schools to receive the services to which they were entitled. As the Department's Memorandum concludes,

> [i]t appears that this legislation was advanced in order to allow the newly created school district to provide special education services to children within the district after the parents had failed to persuade the Court of Appeals that, to do otherwise, violated their constitutional rights.

11. As the Governor recognized when signing the Act into law, "this new school district must take pains to avoid conduct that violates the separation of church and state." Based on similar concerns, the State Education Department not only monitors special education at KJVSD, but also monitors the district to ensure that public funds are not expended to further religion.

12. To ensure that public funds are not expended to further religion in violation of both the Federal and State Constitutions, my staff in its monitoring capacity is unavoidably entangled in matters of religion. For example, SED monitors the use of public funds to support the KJVSD transportation services to ensure that the children and their bus drivers are not separated by sex which a federal district

court found to violate the Establishment Clause. (See, Bollenbach v. Board of Education of the Monroe-Woodbury Central School District, 659 F.Supp 1450 (SDNY 1987)).

13. A separate concern raised in the Department's Memorandum was that,

> [i]f the real reason for establishing the school district of Kiryas Joel is to establish a separate school for handicapped children, as is apparently the case, such purpose would also be inconsistent with both state and federal laws which entitle these children to a free appropriate education in the least restrictive environment. The least restrictive environment . . . allows a handicapped child to be educated with nonhandicapped peers to the maximum extent appropriate. . . Only when it is determined by a committee on special education that the individual needs of the child warrant a segregated setting (which is the most restrictive setting) would such a placement be deemed appropriate.

14. With respect to the mandate that children with handicapping conditions be educated in the least restrictive environment, the Act presents additional problems for the Department because it created a union free school district for the express purpose of providing special education and related services to the handicapped children of KJ. As the Department's Memorandum indicates, state law governing union free school districts does not provide authority for such districts to establish schools exclusively for students with handicapping conditions. Rather it

> distinguishes between the creation of special education classes within the public school district and the authority of a union free school district to contract with BOCES and approved private schools for the education of certain handicapped children who require educational programs in separate school buildings . . .

As the memorandum further explains, the purpose of

> limiting the authority of public schools to create separate schools for handicapped children[,] and requiring the approval of the Commissioner as a prerequisite for placement of such children in segregated facilities [was to provide] a further check to ensure that only those children who require such settings are placed there...

Therefore, the creation of the KJVSD as a union free school district to establish, by design, a separate school exclusively for children with handicapping conditions without regard to the severity of their handicapping condition or their need for placement in a school serving only children with disabilities, is contrary to the intent and prescription of both state and federal law that mandates placement of children with disabilities in the least restrictive environment.

15. Now that the Kiryas Joel Village School District has been established, my staff cannot ensure compliance with state and federal laws for the children with handicapping conditions who reside there because the district provides no opportunities for them to be educated with non-handicapped children.

16. Furthermore, a school district established to serve 100 handicapped children (see, Exhibit J to Second Amended Complaint) contravenes the State's Master Plan for School District Reorganization in New York State, (hereinafter also referred to as "the Master Plan"), pursuant to § 314 of the Education Law which promotes the reorganization and consolidation of smaller school districts to encourage economy and efficiency in New York State's system of public education. As of October, 1990, there were 33 students enrolled in the KJVSD. According to the latest count, 20 of these students are non-residents thereby undermining the Master Plan.

17. The State Education Department asserts that the creation of the Kiryas Joel Village School District involved an accommodation to the residents of Kiryas Joel who insisted upon the receipt of special education and related services in their own village or not at all rather than within the school district in which they were a part and were fully entitled to the services. Such accommodations have never been made for the parents of other handicapped children in

the State of New York, or to my knowledge anywhere in the country.

/s/ Thomas Sobol
Hon. Thomas Sobol
Commissioner of Education

Sworn to before me this
1st day of May, 1991.

Jay Worona /s/
Notary Public

Jay Worona
Notary Public, State of New York
Qualified in Albany County
No. 4785288
Commission Expires Nov. 30, 1991

[TITLE OMITTED IN PRINTING]

AFFIDAVIT OF HANNAH FLEGENHEIMER, DIRECTOR OF THE DIVISION OF PROGRAM MONITORING, OFFICE FOR THE EDUCATION OF CHILDREN WITH HANDICAPPING CONDITIONS

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

HANNAH FLEGENHEIMER, being duly sworn, deposes and says:

1. I am the Director of the Division of Program Monitoring of the Office for Education of Children with Handicapping Conditions (OECHC) of the New York State Education Department (SED). I have worked in the Division since 1977 and in my present capacity since 1983. I am responsible for supervising the 48 members of the Division's staff and oversee State monitoring of special education services to children with handicapping conditions. The monitoring staff is assigned to five Regional Offices throughout the state and is responsible for monitoring special education programs in public school districts, Boards of Cooperative Educational Services (BOCES), state-approved private schools, state-supported and state-operated schools, and other state agencies to ensure that they comply with the applicable state and federal laws and regulations governing the education of children with handicapping conditions.

2. I received an Ed.D. in Special Education from Teachers College, Columbia University in 1974; a Masters in Education from Teachers College, Columbia University in 1972; and an M.A. in Psychology from Teachers College, Columbia University in 1968. From 1971-1977 I taught in the Department of Special Education at Teachers College, Columbia University.

3. I am fully familiar with the facts set forth herein.

4. The education of children with handicapping conditions is governed by the Individuals with Disabilities Education Act (IDEA), 20 USC §1400 et seq. and its implementing regulations, 34 CFR Part 300 et seq.; the Rehabilitation Act of 1973, §504 (29 USC §§794-794(c)) and its implementing regulations at 34 CFR 99; and by Article 89 of the New York State Education Law, and its accompanying regulations, 8 NYCRR Part 200, as well as the general requirements applicable to all school districts as defined in Part 100 of the Commissioner's Regulations.

5. The IDEA confers upon children with handicapping conditions an enforceable substantive right to a free appropriate public education, and conditions federal financial assistance upon a state's compliance with the substantive and procedural requirements of the Act. All states are required under the Act to provide to children with disabilities a "free appropriate public education which emphasizes special education and related services designed to meet their unique needs . . ." (20 USC §1400(c)).

6. Article 89 of the Education Law, §4401 et seq., with its accompanying regulations, is the vehicle which implements federal law governing the rights of children with disabilities in New York State.

7. A "free appropriate public education" means that "special education" and "related services" must be provided at public expense, in conformity with an "individualized education program" (IEP), tailored to meet the unique needs of the child with handicapping conditions. (20 USC §1401(18)). Furthermore, the law requires that educational services be provided in the "least restrictive environment," appropriate to the needs of the student. (20 USC §1412(5)(B); 8 NYCRR 200.1). (See discussion below starting at paragraph 10).

8. "Related services" include "transportation, and such developmental, corrective, and other supportive services . . . as may be required to assist a handicapped child to benefit from special education." (20 USC §1401(17); 34 CFR 300.13(a); 8 NYCRR 200.1(dd)).

9. All students with handicapping conditions are entitled to receive a free appropriate education in the district where they reside. To meet its obligation, a school district must provide a written recommendation or "individualized education program" (IEP) for each child with a handicapping condition, which must be based on a comprehensive evaluation of the child and developed in a meeting of the school district's "Committee on Special Education" (CSE). The school district must identify the school program in which such services will be provided and delineate the other programs considered and why they were not chosen. (20 USC §1401(19); 34 CFR 300.343 and 34 CFR 300.344; Educ.L. §4402(1)(b)(1) and 8 NYCRR 200.4).

10. Because placement in the school closest to a child's home is considered the least restrictive, a child must be placed within the home school whenever an appropriate educational program is available there. (Application of a Handicapped Child, 26 Educ.Dept.Rep. 59, 61 (1986)).

11. The obligation to provide special education and related services in the "least restrictive environment" requires, to the maximum extent appropriate, that children with handicapping conditions are educated with non-handicapped children in as close proximity as possible to the student's place of residence; and that "special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." (20 USC §1412(5)(B); 8 NYCRR 200.1; and see Application of a Child with a Handicapping Condition, 30 Educ. Dept. Rep. 64 (1990); Application of a Handicapped Child, 26 Educ.Dept.Rep. 118 (1986)).

12. It is a violation of state and federal law to remove a pupil from regular classroom instruction unless it is determined that, even with support services, the child would not benefit from instruction in the regular classroom. It is the policy of the State Education Department, as required by federal law, to ensure that even students who cannot benefit from instruction in a regular classroom, are nonetheless educated in public school buildings to ensure them opportunities to interact with their non-handicapped peers in nonacademic areas (i.e., recess, lunch, music, art, gym, etc.). (See Application of a Child with a Handicapping Condition, 29 Educ.Dept.Rep. 1 (1989)), Application of a Child with a Handicapping Condition; 29 Educ.Dept.Rep.

223 (1990); Application of a Child with a Handicapping Condition; 29 Educ.Dept.Rep. 160 (1989); Application of a Child with a Handicapping Condition; 30 Educ.Dept.Rep. 64 (1990); Application of a Child with a Handicapping Condition; 30 Educ.Dept.Rep. 108 (1990)).

13. To ensure that students are educated in the least restrictive environment, the Commissioner's Regulations require that "a continuum of alternative placements" be available in all public schools to meet the needs of students that include instruction in regular classes and special classes, as well as supplemental services such as resource rooms, related services or itinerant instruction, in conjunction with regular class placements. (34 CFR 300.551; 8 NYCRR 200.6).

14. Prior to the legislation creating the Kiryas Joel Village School District (hereinafter also referred to as "KJVSD"), the handicapped children of the Village of Kiryas Joel (hereinafter also referred to as "KJ") were part of the Monroe-Woodbury Central School District and were entitled to receive special education services there. The Monroe-Woodbury Central School District offers a full continuum of services which were fully available to the children of the KJVSD prior to the legislation which created a school district exclusively for the children of KJ.

15. Upon information and belief, prior to the creation of the KJVSD which is coterminous with the Village of Kiryas Joel, the majority of parents of children with handicapping conditions residing in KJ chose not to avail themselves of special education and related services offered to their children by the Monroe-Woodbury Central School District because the Monroe-Woodbury Central School District would not provide these services either on the

premises of Satmar private schools located in KJ, or at a neutral site within the village. Upon information and belief, these parents kept their children out of the public schools to avoid the trauma they believed the children would suffer because of their cultural uniqueness.

16. As the Governor's Memorandum approving Assembly Bill 8747, indicates, the KJVSD was created by special act of the legislature "to resolve [this] longstanding conflict between the Monroe-Woodbury District and the village of Kiryas Joel, whose population are all members of the same religious sect...as a practical solution to what has been, so far, an intractable problem." (Exhibit J to Second Amended Complaint). Signed into law on July 24, 1989, Chapter 748 of the Laws of 1989, creating the KJVSD became effective July 1, 1990.

17. At the time the legislation was proposed, SED expressed its concerns regarding the ability of a school district intended only for children with handicapping conditions to comply with the legal mandate to provide special education to students in the least restrictive environment.

18. Because the State Education Department has concerns regarding the church-state issues involving a school district comprised solely of one religious sect, with a board of education consisting exclusively of members of that sect, my staff not only monitors special education at KJVSD, but also monitors the KJVSD to ensure that public funds are not expended to further religion.

19. Based on SED's monitoring visits, the Department has confirmed that the KJVSD is an insular, segregated educational setting in which both the religion and culture of the Satmarer are inextricably bound. For example, during a recent site visit to the KJVSD, a member of the monitoring team observed on the walls of a preschool classroom, photographs of preschool children lighting the candles of a menorah in their classroom with their preschool teacher.

20. Upon information and belief, prior to the creation of the KJVSD, the majority of Satmar Hasidic children residing in other school districts, such as the East Ramapo School District, and the present Monroe-Woodbury Central School District (exclusive of the newly formed KJVSD) were not enrolled in their public schools and did not take advantage of their services.

21. Currently the East Ramapo School District and the KJVSD have contracted for 17 Satmar children with handicapping conditions who reside in the East Ramapo School District to attend the KJVSD. Likewise, the Monroe-Woodbury Central School District has also contracted with the KJVSD for 3 of their Satmar children with handicapping conditions to attend the KJVSD. Upon information and belief, none of these districts have referred any children with handicapping conditions to the KJVSD who are not members of the Satmar Hasidic sect.

22. The Commissioner of Education has consistently held that the religious background of a student with handicapping conditions is not a relevant consideration

for determining a student's educational placement. (See e.g. Matter of a Handicapped Child, 21 Educ. Dept. Rep. 708, 711 (1982)). Given the fact that the two districts have only referred children with handicapping conditions who are members of the Satmar Hasidic sect to the KJVSD, it is clear that both the East Ramapo School District and the Monroe-Woodbury Central School District, have considered both religion and culture as a factor in their decision to refer these children to the KJVSD.

23. Consequently, classes at the KJVSD now consist exclusively of Satmar children with handicapping conditions from within the district, as well as nonresident Satmar children placed there by the school district where they live. Moreover, in KJVSD, only children with handicapping conditions are enrolled in the district while every non-handicapped child living in the district attends the sectarian school. As a result, there are no opportunities whatsoever for the handicapped children of the village to be placed in classes of the district with their non-handicapped peers.

24. In monitoring the East Ramapo School District, SED has requested the district to demonstrate why it has failed to provide, in-district programs for children who could benefit from interaction with their non-handicapped peers. Without adequate justification, removal from their home district is a violation of the children's right to a free appropriate education in the least restrictive environment.

25. I respectfully request that this Court accept as true and accurate the assertions which have been set forth herein.

/s/ Hannah Flegenheimer
Hannah Flegenheimer

Sworn to before me this
day of May 01, 1991.

Newell Middleton, Jr. /s/
Notary Public

Newell Middleton, Jr.
Notary Public, State of New York
No. 31-4897562
Qualified in New York County
Commission Expires June 1, 1991

[TITLE OMITTED IN PRINTING]

AFFIDAVIT OF DR. SARA FISCHER

STATE OF NEW YORK)
CITY OF NEW YORK) ss:

SARA FISCHER, being duly sworn, deposes and says:

1. I am the Chairperson of the Committee on Special Education for School District 7 in the Bronx, New York. In that position, I am responsible, among other things, for implementing federal, state and city regulations and procedures relevant to the assessment and placement of special education students. I submit this affidavit in my personal capacity and not in any official capacity.

2. As more fully set forth in my resume, attached as an Exhibit to this Affidavit, I have worked in the New York public school system for sixteen years and in the field of education for over twenty-five years. I have had special experience in the areas of bilingual-bicultural education and special education.

3. I received a Ph.D. in Education from Hofstra University in 1984, with a special focus on bilingual-bicultural education.

4. Due to may extensive experience and study of the fields of bilingual-bicultural education and their evaluation and assessment, I am considered an expert in those fields.

5. Based on my personal experience and my knowledge of the views of other experts, it is well established that educational services should take into account the primary language and background culture of the students. It is a fundamental tenet of sound educational theory that children must first learn to think and speak in their native language. If a child's native language is ignored, their learning skills will be adversely affected.

6. It is well recognized that bilingual education should not be divorced from bicultural education. For example, it is an important part of bilingual education to provide educational instruction relating to the traditions, customs, eating habits, and holidays of a child's native culture.

7. It is also well-recognized that the transmission of culture from one generation to the next is essential to the development of learning skills and habits in children. For example, a noted researcher in cognitive development and expert in the assessment and intervention of special education students, Dr. Reuven Feuerstein, has observed in his book The Dynamic Assessment of Retarded Performers at p. 39 (1979) that the "disruption" of this "intergenerational transmission" of culture causes a child to be "culturally deprived." Dr. Feuerstein concludes that "[s]uch deprivation

may strongly affect the adaptive capacities of the individual since he is devoid of the learning skills and habits that are produced by transmission processes." Id.

/s/ Sara Fischer
SARA FISCHER, Ph.D.

Subscribed and sworn to before
me this 21st day of June, 1991.

Ambrosio Rodriquez /s/
Notary Public

Rev. Ambrosio Rodriquez
Commissioner of Deeds
City of New York No 32201
Commission Expires August 1, 1991